

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7376 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KASAM RAZAK JUNEJA

Versus

DISTRICT MAGISTRATE

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Appearance:

MR NM KAPADIA for Petitioner

MR LR PUJARI, A.P.P. for the respondents

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 16/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 8th April, 1996 passed by the District Magistrate, Jamnagar, detaining the petitioner under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985. The detention order was executed on the same day i.e. 8th April, 1996 and since then the petitioner is under detention lodged at District Jail Junagadh.

This Special Civil Application was filed in this Court on 27th September, 1996 and on 30th September 1996 rule returnable by 15th October, 1996 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

The grounds of detention enclosed with the detention order show that eleven criminal cases under Prohibition Act were registered against the petitioner with Jamnagar City "B" Police Station, out of which, eight were pending in the Court and in three cases the police investigation was going on at the time when the detention order was passed. After noticing the allegations against the petitioner in these criminal cases, the detaining authority has referred to the statements made by four witnesses on 1-2-1996 wherein the witnesses have stated about the petitioner's antisocial activities with regard to the unauthorized manufacture, possession and sale of country liquor and his other criminal and violent activities against the witnesses who declined to cooperate with him in his unauthorized business of country liquor. The detaining authority has also stated that according to the statements of the witnesses, they have been publicly beaten by the petitioner and that the petitioner has created an atmosphere of terror whereby the daily routine life of the public has been disturbed. Thus, the petitioner has become a problem for the public order. The detaining authority on the aforesaid material has satisfied himself that the petitioner was engaged in the antisocial activities; he was a bootlegger and a headstrong person. It has been further mentioned by the detaining authority that in the ordinary course it was not possible to prevent the petitioner from engaging in antisocial activities, and therefore, he was required to be detained. Accordingly, the detention order was passed.

Although the detention order has been challenged on more than one ground, the learned Counsel for the petitioner has laid stress on the ground that the allegations as has been levelled against the petitioner even if taken to be true on its face value do not constitute a case of breach of public order. The learned Counsel has contended that at the most it can be said to be a breach of law and order and the detention order therefore deserves to be quashed and set aside on this ground alone.

I have considered the allegations and materials

relied upon against the petitioner by the detaining authority while passing the impugned detention order. On 4th October, 1996 itself a detailed order has been passed in Spl.Civil Application no.3879/1996 in which a considered view has been taken on the basis of the ratio decidendi of several Supreme Court decisions and the decision of this Court that the allegations and materials such as has been relied upon in the present case do not constitute a case of breach of public order and at the most it can be said to be a breach of law and order. The aforesaid decision applies on the facts of this case with full force and I find that the impugned order of detention has been passed on the collateral ground of law and order. In absence of any ingredients of the breach of public order, the impugned detention order deserves to be set aside on this ground alone.

Accordingly this Special Civil Application is allowed. The impugned detention order dated 8th April, 1996 passed by the District Magistrate, Jamnagar is hereby quashed and set aside. The detention of the petitioner is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.

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